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September 9, 1997

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VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Reply Comments of Oncor Communications
CC Docket No. 96-128

Dear Mr. Caton:

Transmitted herewith for filing on behalf of Oncor Communications is an original plus eleven copies of its "Reply Comments" in the above-referenced matter.

If there are any questions regarding this matter, please communicate with the undersigned.

Sincerely,



Mitchell F. Brecher

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

In the Matter of)	
)	
Implementation of the Pay Telephone)	
Reclassification and Compensation)	CC Docket No. 96-128
Provisions of the Telecommunications)	
Act of 1996)	

REPLY COMMENTS OF ONCOR COMMUNICATIONS

Operator Communications, Inc. d/b/a Oncor Communications ("Oncor"), by its attorneys, hereby submits its reply comments in the above captioned proceeding,¹ and states as follows:

INTRODUCTION

Oncor is an interexchange carrier ("IXC") which carries traffic originated at public telephones and therefore will be affected by resolution of the issues raised by the remand of the Commission's Payphone Orders² by the United States Court of Appeals for the District of Columbia Circuit in Illinois Public Telecommunications Ass'n. v. FCC.³ Virtually all calls carried by Oncor originating at public telephones are dialed on a 0+ basis. Therefore, Oncor's reply comments will be limited to the issue of whether, and how, owners of pay telephones

¹FCC Public Notice, "Pleading Cycle Established for Comment on Remand Issues in the Payphone Proceeding," CC Docket No. 96-128, DA 97-1673 (rel. Aug. 5, 1997) (the "Public Notice").

²Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128 (*Report and Order*), 11 FCC Rcd 20541 (1996) ("Payphone Order"); *Order on Reconsideration*, 11 FCC Rcd 21233 (1996) ("Order on Reconsideration") (both orders together "Payphone Orders").

³D.C. Circuit Nos. 96-1394 *et al.*, (July 1, 1997) ("Remand Decision").

should receive compensation for 0+ calls originating from their phones.⁴ For the reasons set forth below, Oncor believes that the fairest, most equitable means for requiring compensation to those payphone service providers not otherwise compensated pursuant to contract, is to require those entities that presently receive compensation related to 0+ calls from such payphones to remit compensation to the payphone providers. Further, the Commission should not prescribe precise levels for such compensation, but rather should allow the market to establish those compensation levels.

I. Compensation to LEC Payphone Providers for
0+ Calls Should be Paid by the Entities Which
Receive Compensation for 0+ Calls From LEC Payphones

Section 276 of the Communications Act⁵ requires the Commission to prescribe regulations which, *inter alia*, establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphones.⁶ By its exclusion of 0+ calls from the Commission's interim compensation plan, the Court of Appeals in the Remand Decision, concluded that the plan is patently inconsistent with the requirement that fair compensation be provided for each and every completed call.⁷

Oncor does not disagree with the court's determination that Section 276 requires the Commission to establish regulations providing for compensation to payphone service providers,

⁴Public Notice, *supra* at 4.

⁵47 U.S.C. § 276.

⁶47 U.S.C. § 276((b)(1)(A).

⁷Illinois Pay Telephone Ass'n. v. FCC, *supra* at 31-32.

including local exchange carrier ("LEC") payphone providers, for each and every call, and that the Commission's interim compensation failed to do so. However, as MCI noted correctly in its comments, Section 276 mandates that payphone service providers must be fairly compensated for each and every call, but it does not mandate how they must be compensated, nor does it require that such compensation be paid directly by presubscribed IXCs.⁸ This is an important point, indeed, a critical point, in light of the legal and regulatory circumstances which have driven the public telecommunications industry (including payphones and payphone services) prior to enactment of the 1996 Telecommunications Act.

In considering who should be responsible for compensating owners of payphones for use of their payphones to complete 0+ calls in the absence of contractual compensation arrangements executed by the payphone owner, the Commission should remain mindful of the fact that under the current laws and regulatory policies applicable to the public telephone market, companies like Oncor and others for many years have provided substantial levels of compensation to others in connection with 0+ calls from payphones. The Commission should avoid resolving the question of payphone owner compensation for 0+ calls in a manner which increases the compensation burden on those entities already subject to payment of compensation for such traffic under the existing industry practices which have evolved as a result of legal and regulatory policies.

In 1988, the United States District Court for the District of Columbia, in its supervision

⁸MCI Comments at 8.

of the Modification of Final Judgment,⁹ mandated the establishment of a system of premises owner presubscription to govern the selection of interexchange carriers serving payphones provided by the Bell Operating Companies ("BOCs").¹⁰ Pursuant to that premises owner presubscription system, the owners of premises where BOC payphones are located are afforded the right to select the IXC to provide long distance service from those phones on a presubscribed basis. As has been noted in the initial comments, premises owner presubscription of LEC payphones has not been limited to the BOCs. The GTE Telephone Operating Companies have been subject to the same requirement pursuant to an antitrust consent decree between the government and GTE Corporation.¹¹ Other LECs, including, for example, the Sprint local telephone companies and Rochester Telephone, also have implemented premises owner presubscription from their payphones.¹²

While the system of payphone premises owner presubscription first prescribed by Judge Greene and implemented by other LECs does not overtly require payment of compensation for 0+ calls by IXCs to payphone premises owners as a legal matter, it cannot be denied that premises owner presubscription has caused the development of a system in which IXCs have competed to become the presubscribed carriers from payphones by offering compensation to premises owners. Thus, for nearly a decade, companies like Oncor and others have been paying very substantial compensation to premises owners for the right to carry 0+ traffic from LEC

⁹United States v. American Telephone and Telegraph Company, 552 F. Supp. 131 (D.D.C. 1982), *aff'd. sub nom. Maryland v. U.S.*, 460 U.S. 1001 (1983).

¹⁰United States v. Western Electric Co., Inc. 698 F. Supp. 348 (D.D.C. 1988).

¹¹United States v. GTE Corporation, 603 F. Supp. 730 (D.D.C. 1984).

¹²Sprint Comments at 14-15.

payphones. In fashioning a plan for compensation to payphone owners for such 0+ traffic from LEC payphones, the Commission should avoid subjecting those current compensation payors to additional compensation requirements.

Other, more appropriate, sources of 0+ compensation to LEC payphone owners are available. These sources include the premises owners themselves who have enjoyed and continue to enjoy commission payments made possible by the presence of LEC payphones on their premises, and the underlying carriers whose networks are being used to carry the 0+ calls which are subject to payphone owner compensation. Those underlying carriers are fully compensated by their reseller customers, pursuant to contracts, tariffs, or both, and principles of fairness make those underlying network providers -- already fully compensated for use of their networks -- appropriate entities to provide the compensation for 0+ calls to LEC payphone owners to which those payphone owners are entitled.

II. Once LEC Payphone Providers Are Allowed to
Negotiate with Premises Owners Regarding 0+
IXC Selection, it is no Longer Necessary or
Appropriate for the Commission to Prescribe
Compensation for 0+ Calls from LEC Payphones

Significantly, the remanded issue of compensation for 0+ calls from LEC payphones only involves the interim period -- a period which will end in October 1997. In the very near future, all LECs, including the Bell Operating Companies, will enjoy the right to contract directly with premises owners regarding the selection of presubscribed IXCs from their payphones.¹³ Once LECs have the right to enter into such contracts with location owners there

¹³All LECs other than the BOCs already enjoy that right. The BOCs were awarded the right to do so in the Payphone Order in accordance with Section 276(b)(1)(D) of the Act, subject to
(continued...)

will be no need for a Commission-prescribed compensation scheme either to establish compensation levels or to ensure receipt of compensation by the LEC payphone providers. At that point, the law and the market will afford each LEC the opportunity and the means to enter into contracts to provide them with compensation for use of their payphones to place 0+ calls.

Indeed, as noted by MCI, BellSouth -- one of the first LECs to contract with location providers -- already has begun to impose a \$15.00 per month charge per payphone on those premises owners who do not contract with BellSouth regarding the selection of interexchange carriers.¹⁴ By extracting \$15.00 monthly payments from those premises owners who do not contract with BellSouth regarding carrier selection, BellSouth has established its own mechanism for compensation as well as the level of compensation for 0+ calls from its payphones. The BellSouth example demonstrates that the marketplace will establish prices for 0+ call compensation and that LEC payphone providers will be fully able to establish mechanisms to receive that compensation. Thus, following the one year interim period, no further Commission action regarding 0+ compensation will be necessary or appropriate.

CONCLUSION

For the reasons stated in these reply comments, the Commission should avoid mandating any LEC payphone compensation scheme for 0+ calls which places the burden of paying compensation on those IXCs who are already subject to substantial compensation obligations to premises owners and to underlying network providers. Furthermore, once LECs have the right

¹³(...continued)

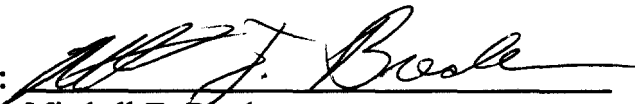
the filing and Commission approval of Comparatively Efficient Interconnection ("CEI") plans. Each of the BOCs' CEI plans for their payphone services has been approved by the Commission.

¹⁴MCI Comments at 9.

to enter into contracts with premises owners regarding selection of presubscribed interexchange carriers from their payphones, the market will establish fair compensation levels and it will not be necessary or appropriate for the Commission to attempt to promulgate compensation levels for 0+ call compensation.

Respectfully submitted,

OPERATOR COMMUNICATIONS, INC.
D/B/A ONCOR COMMUNICATIONS, INC.

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September 9, 1997

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CERTIFICATE OF SERVICE

I, Antoinette R. Mebane, a secretary at the law firm of Fleischman and Walsh, L.L.P., hereby certify that a copy of the foregoing "*Reply Comments of Oncor Communications*" in Docket 96-128, was served this 9th day of September, 1997, upon the following:

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